
**REGIONAL HOUSING NEEDS ASSESSMENT APPEALS BOARD
and
SOUTHERN CALIFORNIA ASSOCIATION OF GOVERNMENTS**

**April 27, 2007
Minutes**

THE FOLLOWING MINUTES ARE A SUMMARY OF ACTIONS TAKEN BY THE REGIONAL HOUSING NEEDS ASSESSMENT APPEALS BOARD. AN AUDIOCASSETTE TAPE OF THE ACTUAL MEETING IS AVAILABLE FOR LISTENING AT SCAG'S DOWNTOWN LOS ANGELES OFFICE.

The Regional Housing Needs Assessment Appeals Board ("Board") held its meeting at SCAG's downtown Los Angeles office.

Members Present

Hon. Jon Edney (**Chair**) – Imperial County
Hon. Gil Coerper – Orange County
Hon. Tim Jasper – San Bernardino County
Hon. Carl Morehouse – Ventura County
Hon. Paul Nowatka – Los Angeles County
Hon. Charles White – Riverside County

Alternate Members Present

Hon. Larry McCallon – San Bernardino County

Members and Alternates Not Present

Hon. Christine Barnes – Orange County (Alternate)
Hon. Melanie Fesmire – Riverside County (Alternate)
Hon. Mike Ten – Los Angeles County (Alternate)

1.0 CALL TO ORDER

Hon. Jon Edney, Chair, called the hearing to order at 9:05 AM. Hon. Carl Morehouse led the Board in the Pledge of Allegiance. Hon. Jon Edney outlined the hearing guidelines and stated that there was a 30 minute timeline for an appeal or revision, each jurisdiction is allowed a 10 minute presentation, followed by a 5 minute staff report, a 5 minute rebuttal per jurisdiction, and 10 minutes for public comment. The Chair and/or Board reserve the right to request that staff waive their verbal report given that the written report is included as part of the agenda packet. Hon. Jon Edney also indicated that as of the April 5th meeting, a new policy was passed which allowed for jurisdictions to provide new information as long as it included a one paragraph summary of the information and another policy was passed prohibiting power point presentations.

**REGIONAL HOUSING NEEDS ASSESSMENT APPEALS BOARD
and
SOUTHERN CALIFORNIA ASSOCIATION OF GOVERNMENTS**

**April 27, 2007
Minutes**

2.0 PUBLIC COMMENT PERIOD

There were no public comments.

3.0 REVIEW AND PRIORITIZE AGENDA ITEMS

The Tustin Appeal was held over and will be heard after the Appeal for the City of Irvine.
The City of Sierra Madre withdrew their Appeal request.

4.0 INFORMATION ITEMS

There were no information items

5.0 ACTION ITEMS

5.1 Consideration of REVISION REQUESTS

5.1.1 City of Irvine

Revision request seeking an adjustment to the City's
Income category distribution to reduce their fair share of
affordable housing.

Representatives from the City of Irvine included Mark Asturias, Bill Ihrke and Barry Curtis. A brief summary for a revision based on two factors of AB2158 factors were given: High housing cost burden and the lack of available land. The applicant requested an adjustment to their fair share of affordable housing. Due to comments for the Revision and Appeals being similar in nature, and at the request of the City, it was MOVED (Hon. Carl Morehouse), SECONDED (Hon. Paul Nowatka) and UNANIMOUSLY APPROVED to hear both requests at the same time when the appeal item for Irvine is called.

Hon. Gil Coerper stated that the law firm representing Irvine, Rutan and Tucker has worked in his City of Huntington Beach from time to time but that he has been advised this does not represent a legal conflict of interest.

5.1.2 City of Laguna Niguel

Revision request seeking an adjustment to the City's
Income category distribution to reduce their fair share of

**REGIONAL HOUSING NEEDS ASSESSMENT APPEALS BOARD
and
SOUTHERN CALIFORNIA ASSOCIATION OF GOVERNMENTS**

**April 27, 2007
Minutes**

affordable housing.

Due to comments for the Revision and Appeals being similar in nature, the City requested both requests be heard at the same time - when the appeal item for Laguna Niguel is called.

It was MOVED (Hon. Tim Jasper), SECONDED (Hon. Charles White) and UNANIMOUSLY AGREED to approve the City's request to hear the revision and appeal considerations concurrently.

5.1.3 City of Yorba Linda

Revision request to reduce their draft RHNA allocation by 20% (404 units)

Mr. Christianson, speaker from Yorba Linda summarized the request for a revision. Mr. Christianson stated that the City did do a decent job in the last cycle of building low and very low income housing. The City has entitled or constructed over 409 units of low/very low income housing. With this new number of close 1000, not including the moderate, SCAG has set us up to fail. The City understands the importance of low income housing, but to what point? The City will get to a point where the City will not be able to get its housing elements certified; the City does not have the available land to construct the units above and beyond the 2021 units. The housing stock is relatively new, most have been built within the last 30 years; it's really not a candidate for redevelopment or for infill development at this point. Most of the units are in the City's hillside areas. The hillside areas do not have capacity for additional infrastructure. Putting any more units there would be devastating to the community. In addition, over the last five to six years, the Orange County Transportation Authority has deleted several key projects that would help the City with circulation issues. The 91 freeway is already over capacity, so building more housing and fewer jobs means the City is putting people onto the freeway. The City is a suburban community, the City does its best to make the numbers, and the City does its best to provide affordable housing. With this number, it seems that SCAG has set the City up to fail.

Staff Report:

Ms. Johnson, SCAG Staff, reported: The City of Yorba Linda just mentioned that the City does not have a problem with the 2021 units

**REGIONAL HOUSING NEEDS ASSESSMENT APPEALS BOARD
and
SOUTHERN CALIFORNIA ASSOCIATION OF GOVERNMENTS**

**April 27, 2007
Minutes**

allocated, but more of a problem with those units being allocated to the lower income categories. The City asked the question, to what point does the City need to plan for low income units? The law specifically states the categories for low income units and in the methodology it outlines the 110% policy to address this issue. Furthermore, the City states that they have only one area of vacant land available, but the City states that they need to rezone in order to meet the number of units. However, this is the requirement, by law, that the city must consider to determine inventory in their housing element and meet their RHNA numbers. Furthermore, they mentioned the jobs-housing balance. The Orange County projection that was adopted by the OCCOG and approved by OCCOG to be part of the RTP and RHNA improves jobs-housing balance. The next point the City contends is that its surrounding transportation is already at capacity. The OCCOG has approved these numbers which are part of the OCP and for use in the RTP, and requested they be used by SCAG for all regional planning purposes.

Rebuttal:

Mr. Christianson: The City thanked staff, but the City pointed out that the OCCOG projections call for 2021 units. The City has entitled 2021 units in line with the projections. In order to meet the City's low and very low number, however, it will have to build an additional 1,000 plus units. That wasn't considered in the OC forecast. Sure, the City can make the 2021 and make an effort to do the affordable units. But, in order to meet the new numbers the City will have to build another 1000 units. The City will consider rezoning, but at what cost? SCAG is asking the City to provide for low/very low household units and market rate units. The City does not have the available land, therefore will have to rezone.

At some point the City is going to get into areas where more communities will start to adopt measure "B"'s, there was one adopted in Sierra Madre. There's one on the ballot in Santa Clara. The City of Yorba Linda followed suit from Newport Beach. As communities decide that they don't want to take the density, based on quality of life, more of these measures will be passed. Then there will be more cities that will be asking SCAG for the same thing. As a planner I don't know what to do. I can't go into my community and tell the City that they need to rezone for residential at higher density when the City passed a measure saying that residents don't want anything greater than a certain density. The City has

**REGIONAL HOUSING NEEDS ASSESSMENT APPEALS BOARD
and
SOUTHERN CALIFORNIA ASSOCIATION OF GOVERNMENTS**

**April 27, 2007
Minutes**

set itself up for lawsuits, this is a vicious cycle. Requiring the City to plan for 50-100% additional units seem to be unfair.

Public Comments: By Mr. Bac Dan Tran, Resident-- Against Yorba Linda

Mr. Christianson, I have a lot of respect for the City but the City says that the only land available is commercial industrial land. I disagree. As a landowner, I know the area and it's a planned development. Two years ago a plan was submitted to the City to build 15 homes, affordable homes. It was flatly denied. The reason was "Open Space". There is no record of open space, now it's defacto open space, it's not fair. Now, Mr. Christianson talks about the hillside area and traffic congestion. What about the right of the people, the benefit to the community, the City has to consider that also. Mr. Christianson said the City is doing its best to provide affordable housing to people. Attorneys for both sides met and again, defacto open space was the City's answer. I urge the Board to deny the request and direct the City to work directly with landowners to provide the adequate housing.

Chair: Mr. Tran, thank you, but for the record, the Board does not have any authority under this Board to direct the city or any jurisdiction to work directly with any developer.

Additional Public Comments:

Lynn Harris, SCAG Staff, read a letter dated April 25, 2007 from the Public Law Center in support of SCAG's recommended denial of the Revision and Appeals to the RHNA distribution filed by the City of Yorba Linda.

Additional Comments from Staff:

Lynn Harris, SCAG Staff, summarized the OCCOG/Orange County Projection process, bringing attention to staff report attachments that include the public presentation, made at the time of OCCOG action, listing the uses for the OCP forecast and that RHNA was listed. She further explained that several COGs in the region followed similar procedures as part of the local input to the Integrated Growth Forecast development

**REGIONAL HOUSING NEEDS ASSESSMENT APPEALS BOARD
and
SOUTHERN CALIFORNIA ASSOCIATION OF GOVERNMENTS**

**April 27, 2007
Minutes**

process. In Orange County, requests for changes in population, households and employment numbers in the cities and the county were analyzed by SCAG staff before being included in the regional growth forecast.

The Board asked clarifying questions of the Staff and Applicant.

It was MOVED (Hon. Tom Jasper), SECONDED (Hon. Gil Coerper) and UNANIMOUSLY AGREED to approve the Staff's recommendation to deny the City of Yorba Linda's Revision request. **A ROLL-CALL VOTE WAS TAKEN AND RECORDED AS FOLLOWS:**

**Los Angeles County – Yes
Orange County – Yes
Riverside County – Yes
San Bernardino County – Yes
Ventura County – Yes
Imperial County – Yes**

**5.2 OPEN PUBLIC HEARING:
Consideration of APPEAL REQUESTS
Attachments**

5.2.1 City of Aliso Viejo

Revision request to reduce draft RHNA allocation by 42.6% (388 units).

Appeal request to reduce draft RHNA allocation by 42.6% (388 units).

It was MOVED by (Hon. Gil Coerper) and SECONDED (Hon. Charles White) and UNANIMOUSLY AGREED to approve, the City's request to hear the revision and appeal consideration at the same time.

Public Comments for either the Revision or Appeal

Lynn Harris, SCAG Staff, read into the record:

"April 25, 2007 letter from the Public Law Center expressing support of staff's recommended denial of the appeal filed by Aliso Viejo."

**REGIONAL HOUSING NEEDS ASSESSMENT APPEALS BOARD
and
SOUTHERN CALIFORNIA ASSOCIATION OF GOVERNMENTS**

**April 27, 2007
Minutes**

Cynthia Adams, Mayor of Aliso Viejo, the Mayor Pro Tem, Carmen Cave, City Manager Mark Pulone, and Planning Director Gina Garcia each gave a presentation for the Revision and Appeals request

The City of Aliso Viejo appreciates the need to improve housing opportunities through out the State. The City, since it incorporated in July 2001 as been proactive. The Mayor Pro Tem, Carmen Cave will address what the City has done with developers. The City will also address the proposed allocation for the City and explain why it's not achievable for the City. The City will respond and address the comments of SCAG staff. The goal of the City today is to leave the Appeals Board with an understanding that the City is not skirting its responsibilities, but work to achieve an allocation that the City can achieve.

Carmen Cave: the City of Aliso Viejo was originally entitled as a master-planned community by the County of Orange. At that time it was mandated that 25% of the 20,000 residential units allowed within the development to be affordable. Aliso Viejo became a city in 2001; at the time of incorporation the City had 18,836 housing units. The City was basically within the terms of the master plan. At the time the City was incorporated, 5,823 of the residential units, or 31%, were certified as affordable. At that time SCAG had tried to assign almost 2,500 affordable units to the City, which would have exceeded the housing allowed under the development agreement that the City had no control over. The City made an appeal and that number was brought to zero and the City moved forward as a community. During the City's first general plan process, the City developed overlay areas in some of areas that had been entitled by the county for commercial and retail development. The City put into its environmental impact report that perhaps that there may be some future residential development there. The commercial market turned in the early 2000s and builders wanted to redesign their projects into residential housing and the City said yes. However, even with the allocation of zero for affordable housing units, the City mandated 10% low and 5% very low.

Communities around the City who are planning 5,400 new residential units in the next year received double digit housing requirements. The City does not understand how it got a 911 number with a development agreement in place until next year. The City has more than 31% of

**REGIONAL HOUSING NEEDS ASSESSMENT APPEALS BOARD
and
SOUTHERN CALIFORNIA ASSOCIATION OF GOVERNMENTS**

**April 27, 2007
Minutes**

affordable housing and a number like this is unachievable. The City has tried; it has accommodated and done its job. The City has been very inclusionary in its policies. It is very difficult for the City to understand how the number was arrived at.

Mr. Plune. I would also like thank SCAG staff for taking the time to meet with the City. The City of Aliso Viejo had a good meeting with SCAG staff. The City thinks SCAG staff understood the dilemma that the City is in. The City heard at the last hearing a reference to the OCCOG and the participation in that process and the fact that the numbers weren't disputed in that process. The City points out that the 911 units is not a number the City is disputing. As Mayor Pro Tem Cave just mentioned, the City has 1000 units entitled in Aliso Viejo. Those entitled units are under development agreements. The City anticipates the ability to achieve the allocated number of 911 units. What was not communicated through the OCCOG process was the fact that a very high percentage was going to be allocated to the low and very low and moderate categories. The City is having difficulty with any program that can come close to achieving those numbers. The numbers the City has been allocated from SCAG are 206 very low, 164 for low and 177 for moderate. In perspective, the City included an affordability requirement in those development agreements. The development agreements are a contractual obligation and the City can't go in unilaterally and change them.

The City of Aliso Viejo wants the Appeals Board to know that the City values affordable housing. The City feels like it's done the right things, and in return, the City is looking at a number that is unachievable in Aliso Viejo. Thank you for your time

Staff Report:

Elizabeth Delgado, SCAG Staff, stated that staff recommends the denial of the Revision and Appeal request for the city of Aliso Viejo. AB 2158 factors were used as a basis for the City's Revision and Appeal. The use of the general plan as outlined in RHNA law can not be used as the basis for an Appeal. The City cited jobs-housing balance and lack of infrastructure in pointing to the general plan. Secondly, they point to the constraints of additional housing cost for very low and low income categories. This request would seek a change in the SCAG fair share policy approved by the SCAG Regional Council and consistent with the

**REGIONAL HOUSING NEEDS ASSESSMENT APPEALS BOARD
and
SOUTHERN CALIFORNIA ASSOCIATION OF GOVERNMENTS**

**April 27, 2007
Minutes**

RHNA law. Thirdly, for appeal purposes, they cite a changed circumstance based on the entitled units that were mentioned in the presentation by the appellant and based on 2004 general plan numbers. Staff has concluded that this does not amount for an unforeseen change under this appeal.

Rebuttal: Mr. Pulone: As it relates to the general plan issue, SCAG staff indicated that this is not grounds for an appeal. The City thinks it was misinterpreted. The City referenced the general plan because it is the same as the master plan. Aliso Viejo is a master planned community, when the City incorporated in 2001 the City inherited the entitlements already in place. There were no opportunities in place for this city to change things. The master plan does not go away until Feb. 08. In regards to the expense, it's relevant with the real estate prices in Orange County to get product built that includes such high percentages of lower-income categories.

The Appeals Board had a series of clarifying questions for the Staff and Applicant.

Hon. Jon Edney, Chair: I want to applaud the City's effort in looking at affordable housing. For me, the Chair does not think the Board is looking at a reduction number of units, because it's been stated by the City staff that they have the ability to build 1000 units, that is a matter of record. So, in the Chair's regard, that is not part of the discussion. The question becomes how you break down the units to income classifications. How can the Board justify an Appeal or Revision in the numbers when the City basically said they can build the units? I'm intrigued by the master plan, for the record, it's been noted, it expires in Feb. 2008, the cycle goes to 2014, I'm not sure how germane that is in those two matters. I don't have a lot of concern in my mind. I'd like to ask SCAG staff, what is an affordable house in Orange County?

Joe Carreras, SCAG Staff stated that affordability is defined in terms by the State Housing Law, in terms of the income of the household.

Any Additional Public Comments: None

Any Additional Comments from the Board: None

**REGIONAL HOUSING NEEDS ASSESSMENT APPEALS BOARD
and
SOUTHERN CALIFORNIA ASSOCIATION OF GOVERNMENTS**

**April 27, 2007
Minutes**

It was MOVED (Hon. Tim Jasper), SECONDED (Hon. Charles White) and UNANIMOUSLY AGREED to approve the Staff's recommendation to deny both of Aliso Viejo's Revision and Appeals requests. **A ROLL-CALL VOTE WAS TAKEN AND RECORDED AS FOLLOWS:**

**Los Angeles County – Yes
Orange County – Yes
Riverside County – Yes
San Bernardino County – Yes
Ventura County – Yes
Imperial County – Yes**

5.2.2 City of Irvine
Revision and Appeal request.

Mr. Mark Asturias, Mr. Bill Ihrke & Mr. Barry Curtis, represented the City of Irvine in its Revision and Appeal request. Mr. Asturias stated that the City respectfully disagreed with the characterization of the SCAG staff report. The City is requesting a revision as stated in the application to the Board. The City noted that alternatively they are providing the Board some options to consider, the City was not saying in its letter that that was the only option the City wanted the Board to consider. SCAG staff also asked that the City consider the Attorney General's opinion on providing units and as well as the trade and transfer agreement options that are noted in the staff report. The City would like to point out that in the Attorney General's opinion section as it relates to the provision of affordable housing. That opinion is in terms of what is realistically required as far as production that the City can negotiate with HCD. It does not relieve the jurisdiction from identifying the total RHNA need that is required. SCAG has asked the City to provide 35,000 housing units for a county where the entire county as a subregion has 82,000 units. That is essentially 43% of the entire county allocation.

Mr. Curtis added that the City is specifically discussing the AB2158 factors. Mr. Curtis continues with discussing the lack of land availability, the burden of high housing costs and how it will cost the City of Irvine over six billion dollars in local assistance over the planning period. It will require the City to contribute over 500% of its entire annual budget each

**REGIONAL HOUSING NEEDS ASSESSMENT APPEALS BOARD
and
SOUTHERN CALIFORNIA ASSOCIATION OF GOVERNMENTS**

**April 27, 2007
Minutes**

year to meet the goal proposed by SCAG. Attainment of the goal is fiscally impossible and may open the city to further legal actions and sanctions. The staff report indicates that SCAG has determined that this factor refers to the market cost of housing paid by homebuyers and renters. The argument makes no sense and appears to discourage the provision for affordable housing; this determination seems to be at odds with authority granted SCAG in government code section 65584.04, subsection e. This sub-section requires SCAG to explain in writing how the methodology is consistent with subdivision D of section 65584. Rather than being consistent with this sub-section as required, the explanation in SCAG's Staff report provides a methodology completely at odds with subdivision D. Irvine respectfully disagrees with the determination of SCAG as in the SCAG staff report.

Staff Report:

The City of Irvine's request, as written, does not propose any change to the total RHNA allocation, but requests an adjustment to the income category distribution that would reduce the City's allocation in the three affordable categories by approx. 75% and by 16,000 units. The request cites AB 2158 factors and change circumstances but relates only to the income category distribution and therefore staff believes that the pivotal issue here, for both revision and appeal requests, is application of methodology. State law on housing elements and the RHNA process clearly requires that all jurisdictions plan for providing their fair share of regional need for all income groups in the population. The SCAG Regional Council has adopted a RHNA methodology that includes the social equity policy that will move jurisdictions 110% of the way towards the county median income distribution over the planning period. This adopted methodology including the fair share policy was correctly applied in this case; indeed, none of the city's arguments contend that the methodology was improperly applied. Recall that only the application of the methodology, not the methodology itself, is a valid basis for appeal. SCAG staff understands the City may face challenges in providing this housing but that does not release the City from its statutory responsibility to plan for its fair share of regional housing for all income groups.

Rebuttal

**REGIONAL HOUSING NEEDS ASSESSMENT APPEALS BOARD
and
SOUTHERN CALIFORNIA ASSOCIATION OF GOVERNMENTS**

**April 27, 2007
Minutes**

The City has tried to make the point to the Board that the City does not believe that this is a fair share allocation. The City looks at all of the factors that have been presented to the Board, as well as when one looks at all of the issues related to the City's jurisdiction in comparison to the other jurisdiction in the regions. The City is being asked to shoulder 43% of the total housing allocation for the subregion in one community, one community out of 34. It does not make sense to the City of Irvine that it would get 43% of the entire subregion allocation. Where is the fair share distribution in that manner? The City does not believe that it has been properly applied and that the methodology has been properly utilized to make that determination.

Public Comments on the Revision request

Lynn Harris, SCAG staff, entered a letter from the Kennedy Commission into the record and a new letter dated April 27, 2007 from the Public Law Center which supports the City of Irvine's Revision and Appeal request.

Additional Public Comments: None

Jeff Margulies, Appeals Board Legal Advisor, advised the Board on how to proceed:

The Board is not looking at a reduction in the numbers; it is looking at a change in how the City is classified in according to the housing groups. Secondly, under the revision, and because the City of Irvine combined their report, the City spoke greatly about the methodology and the methodology, of course, is not part of the revision process. The Board's task is to determine whether the revision is a challenge to the methodology by which this number was arrived at or is it an application of data under AB 2158 that should have led to a different number. If it's the latter, it's proper to consider.

Board Member Hon. Paul Nowatka stated that the City of Irvine currently has entitlements for 35,000 and that is the reason for not asking for a revision or appeal under the total number. So they were just looking at the

**REGIONAL HOUSING NEEDS ASSESSMENT APPEALS BOARD
and
SOUTHERN CALIFORNIA ASSOCIATION OF GOVERNMENTS**

**April 27, 2007
Minutes**

other three categories: moderate, very low and low income as being part of the appeal.

Chair, Jon Edney stated:

The methodology, as SCAG staff contends, was properly applied. Furthermore, the Regional Council made a determination of the fair share policy—110% policy does comply with the letter and spirit of State Law. In this appeal process, only the application of the methodology, rather than the method itself can be appealed. There is nowhere in the appeal does the city request a reduction in the total number.

Joann Africa, SCAG Legal Counsel, commented on the applicant's statement regarding Trade and Transfer. She explained that jurisdictions can trade or do alternative distributions before the final RHNA is adopted by the Council of Governments. She explained the law also allows trades and transfers to occur after adoption of the final RHNA plan. SCAG's process is consistent with the law and staff has made it as simple as possible. Two or more jurisdictions, as long as the jurisdictions maintain the total housing numbers need that was allocated to them can enter into a trade and transfer agreement.

Rebuttal

Comments were made regarding the equity nature of the allocation. The statute clearly says there must be a distribution equity manner. The factors to be considered are jobs and residential ratios, also infill development and social economic equality and improving inter-region relationships between jobs and housing. The City pointed out that they are roughly the same size geographically and in population as other cities that would have infill opportunities that aren't getting anywhere near the allocation that has been proposed by SCAG. With the number of units that have been allocated to Irvine, specifically, the 60% affordable, that is going to be a non-starter and impossible to trade anything that the City of Irvine has already adopted as its goal. The City has promoted affordable housing and implementing a land trust. The City has been taking voluntary efforts in trying to improve affordable housing in the community. The City noted that its situation is similar to Aliso Viejo, where the City has done good deeds and is being punished for those good deeds. Thank you.

**REGIONAL HOUSING NEEDS ASSESSMENT APPEALS BOARD
and
SOUTHERN CALIFORNIA ASSOCIATION OF GOVERNMENTS**

**April 27, 2007
Minutes**

Additional Comments from Staff:

Lynn Harris, SCAG Staff, summarized the OCCOG/Orange County Projection process, bringing attention to staff report attachments that include the public presentation, made at the time of OCCOG action, listing the uses for the OCP forecast and that RHNA was listed. She further explained that several COGs in the region followed similar procedures as part of the local input to the Integrated Growth Forecast development process. In Orange County, requests for changes in population, households and employment numbers in the cities and the county were analyzed by SCAG staff before being included in the regional growth forecast.

Additional Public Comments:

Lynn Harris, SCAG Staff, referred to a letter received from The Kennedy Commission with respect to the City of Irvine's Appeal request. The Kennedy Commission does not support the RHNA assessment plan and recommends that the Appeal request be granted.

Eileen McCarthy, Public Law Center Staff Attorney, provided a letter and public comments that the proposed RHNA distribution vastly disproportionately assigns numbers to the City of Irvine. Anaheim has not appealed but the City also received a large allocation. The Center is concerned that the social economic factors that is required to be considered under State law is something that would require a different distribution. The Center requested that there be a more equitable distribution from a social economic prospective of the need of the lower income households, throughout Orange County.

Additional Public Comment on the Revision or Appeal request for the City of Irvine

None

Additional Staff Report

Joe Carreras, SCAG Staff, stated that the checks and balances associated with this process are in keeping with public hearings on the methodology, subregional workshops, interaction with cities individually. The Center for Demographic Research, or CDR, also conducted its own outreach. The

**REGIONAL HOUSING NEEDS ASSESSMENT APPEALS BOARD
and
SOUTHERN CALIFORNIA ASSOCIATION OF GOVERNMENTS**

**April 27, 2007
Minutes**

total assigned to Orange County resulted in a much higher number as compared to the earlier version.

There is more housing proposed in the subregion in an effort to better balance jobs and housing.

Legal Counsel Jeff Margulies engaged in a discussion with the City's outside counsel regarding the nature of the City's objections to the application of the RHNA methodology. The applicant's representatives acknowledged that they did not object to the methodology at the time that it was approved by the Regional Council, or to the application of the methodology as approved. The City's objection and reason for appeal is that the application to the methodology resulted in an allocation that was inconsistent with the objectives of the general RHNA law. Mr. Margulies advised the Appeals Board that an appeal could be granted under SB 12 on methodology grounds only if the City demonstrates that SCAG failed to apply the approved methodology.

It was MOVED (Hon. Charles White), SECONDED (Hon. Gil Coerper) and UNANIMOUSLY APPROVED to approve the Staff's recommendation to deny the City of Irvine's Revision and Appeals requests. A ROLL-CALL VOTE WAS TAKEN AND RECORDED AS FOLLOWS:

**Los Angeles County – Yes
Orange County – Yes
Riverside County – Yes
San Bernardino County – Yes
Ventura County – Yes
Imperial County – Yes**

Tustin Continued Public Hearing (Held over from the April 26, 2007)

The Chair stated that the Appeals Board continued the appeals request for the City of Tustin to allow staff to research additional information. The Board will allow a 10 minute presentation, and allow Tustin to respond if they desire.

**REGIONAL HOUSING NEEDS ASSESSMENT APPEALS BOARD
and
SOUTHERN CALIFORNIA ASSOCIATION OF GOVERNMENTS**

**April 27, 2007
Minutes**

Dr. Wen, SCAG staff made the presentation:

On Nov. 30th 2006 the OCCOG Board adopted 2006 projection. After the adoption was communicated with the SCAG Director of Policy and Planning and Orange County Board, SCAG staff was directed to reduce 985 units for City of Tustin as a result of a military base closure in the City. SCAG staff reviewed the CDR number later and assuming the reduction had already occurred. It had not occurred. To honor the written agreement with the OCCOG Board and the City of Tustin, staff recommends the Appeals Board grant the Appeal application to reduce 985 units from the city's allocation.

Comments from the Chair, Hon. Jon Edney:

I want to extend my appreciation to the City of Tustin for providing the additional documentation. I want to applaud the SCAG staff, they correctly reviewed a situation that was proposed by the jurisdiction, brought forth the proper documentation and clarification. This is the way the process is supposed to work.

It was MOVED (Hon. Paul Nowatka), SECONDED (Hon. Charles White) and UNANIMOUSLY AGREED to accept the revised Staff recommendation to approve Tustin's Appeal for 985 units. 5.1.4

**5.2.3 City of Laguna Niguel
Revision and Appeal request.**

The Revision request seeks an adjustment to the City's income category distribution to reduce their fair share of affordable housing.

The Appeal request seeks an adjustment to the City's income category distribution to reduce their fair share of affordable housing.

Larry Longnecker, represented the City of Laguna Niguel.

Staff Report was waived

Public Comments:

**REGIONAL HOUSING NEEDS ASSESSMENT APPEALS BOARD
and
SOUTHERN CALIFORNIA ASSOCIATION OF GOVERNMENTS**

**April 27, 2007
Minutes**

Lynn Harris, SCAG Staff, entered a letter from the Kennedy Commission into the record supporting the denial of the requested actions into the record.

Additional Public Comments: None

It was MOVED (Hon. Gil Coerper), SECONDED (Hon. Charles White) and UNANIMOUSLY AGREED to approve the Staff's recommendation to deny the City of Laguna Niguel's Revision and Appeals requests. **A ROLL-CALL VOTE WAS TAKEN AND RECORDED AS FOLLOWS:**

**Los Angeles County – Yes
Orange County – Yes
Riverside County – Yes
San Bernardino County – Yes
Ventura County – Yes
Imperial County – Yes**

- 5.2.4 City of Yorba Linda
Appeal request to reduce draft RHNA allocation by 20% (404 units).

, represented the City of Yorba Linda

Public Comments on the Appeal request

Lynn Harris, SCAG Staff, entered letters from the Public Law Center and the Kennedy Commission supporting denial of the requested actions into the record.

Public Comment: None

Staff Report:

Joe Carreras, SCAG Staff, gave a brief report.

Comments from the Board: None

**REGIONAL HOUSING NEEDS ASSESSMENT APPEALS BOARD
and
SOUTHERN CALIFORNIA ASSOCIATION OF GOVERNMENTS**

**April 27, 2007
Minutes**

It was MOVED (Hon. Gil Coerper) SECONDED (Hon. Charles White) and UNANIMOUSLY AGREED to approve the Staff's recommendation to deny the City of Yorba Linda's Revision request. **A ROLL-CALL VOTE WAS TAKEN AND RECORDED AS FOLLOWS:**

**Los Angeles County – Yes
Orange County – Yes
Riverside County – Yes
San Bernardino County – Yes
Ventura County – Yes
Imperial County – Yes**

- 5.2.5 City of Hawaiian Gardens
Appeal request to reduce draft RHNA
allocation by 50% (72 units).

Jack Wong, represented the City of Hawaiian Gardens and reported that the City of Hawaiian Gardens was land locked.

Public Comment: None

Comments from the Board: Clarifying questions were asked of the applicant and staff.

A Staff Report was provided

It was MOVED (Hon Gil Coerper), SECONDED (Hon. Tim Jasper) and UNANIMOUSLY AGREED to approve the Staff's recommendation to deny the City of Hawaiian Gardens Appeals request. **A ROLL-CALL VOTE WAS TAKEN AND RECORDED AS FOLLOWS:**

**Los Angeles County – Yes
Orange County – Yes
Riverside County – Yes
San Bernardino County – Yes
Ventura County – Yes**

**REGIONAL HOUSING NEEDS ASSESSMENT APPEALS BOARD
and
SOUTHERN CALIFORNIA ASSOCIATION OF GOVERNMENTS**

**April 27, 2007
Minutes**

Imperial County – Yes

- 5.2.6 City of Downey
Appeal request to reduce draft RHNA
allocation by 50 % (549 units).

John Godlewski, represented the City of Downey in its Appeal request based on the AB2158 factors.

Public Comments: None

Staff Report was provided by Ms. Delgado

Board Comments: None

Hon. Jon Edney, Chair, stated for the record:

In the Board's packet page #230, there is a letter from the Mayor of the City of Downey. On page 231 in the letter it states "City of Downey is aware that SCAG does not consider the jurisdiction's general plan and zoning when allotting the total number of units during the RHNA process." For clarification purposes, this has been alluded to several times, it is not SCAG or SCAG staff that does not allow it. It is State Law that does not allow consideration of the General Plan or local zoning. What SCAG staff is doing is following the law. I don't think a jurisdiction can come in and claim SCAG staff didn't appropriately apply or consider the factors. I think it's important to clarify that it is not SCAG staff that didn't appropriately apply or consider the factors. It is state law and the methodology that was approved by the SCAG Regional Council. It is important to put on the record.

Unfortunately, while the City's points are germane to the issue you face in the city of Downey. The problem is we (the Board) are in a situation that only allows the Board to look at a defined area of scope in granting appeals. I don't find that the City has provided evidence to back up its claim in regard to what the Board can look at with the 2158 factors.

It was MOVED (Hon. Gil Coerper), SECONDED (Hon. Charles White) and UNANIMOUSLY AGREED to approve the Staff's recommendation

**REGIONAL HOUSING NEEDS ASSESSMENT APPEALS BOARD
and
SOUTHERN CALIFORNIA ASSOCIATION OF GOVERNMENTS**

**April 27, 2007
Minutes**

to deny the City of Downey's Appeals request. **A ROLL-CALL VOTE
WAS TAKEN AND RECORDED AS FOLLOWS:**

**Los Angeles County – Yes
Orange County – Yes
Riverside County – Yes
San Bernardino County – Yes
Ventura County – Yes
Imperial County – Yes**

- 5.2.7 City of Monterey Park
Appeal request to reduce draft RHNA
allocation by 72% (817 units).

Samantha Duong, represented the City of Monterey Park in its Appeal
request based on land availability.

The City of Monterey Park's appeal is based on the 2158 factors:
infrastructure and land availability. The City did not ask for a reduction,
only for a reconsideration of the allocated number. The land availability:
the City is 7.4 square miles, the population is 64,000, and the remaining
undeveloped land includes two to three acre, single parcel, hillside
property which is vacant, also public parks and Edison land. The City is
comprised of mainly hillside properties and little flat land. In 2001 the
city updated its general plan to respond to the previous RHNA cycle and
to include mixed use. The city has many land constraints. The city could
not get in touch with the privately-owned water companies that were
discussed in our letter and could not provide the age of its infrastructure.

Hon. Jon Edney, Chair, stated: I'm going to ask staff to waive their report
at this time. Ms. Duong, I can allow you additional time although there is
nothing to rebut. There is at least, in your letter, you cite the basis but I
can't find the evidence. You did a wonderful job in your presentation, but
I want to refer you to the problem we face. You bring up your sewer
system, under the government code, you have to provide evidence that
beyond the control of Monterey Park you can't increase the use of that or
there is some order that there can be no increase. I note for the record that
you have not provided any evidence of that, you stated in your testimony,

**REGIONAL HOUSING NEEDS ASSESSMENT APPEALS BOARD
and
SOUTHERN CALIFORNIA ASSOCIATION OF GOVERNMENTS**

**April 27, 2007
Minutes**

hope you understand that it doesn't allow us to consider it. Can you get that evidence?

Applicant: No, evidence cannot be provided.

Any Public Comments: None

Comments from the Board:

Hon. Carl Morehouse stated: I appreciate your patience. In reference with meeting the last numbers, it was a 5 year cycle and now we're on an 8 ½ year cycle. This is a target number for planning purposes. Without the documentation, we're constrained.

It was MOVED (Hon. Carl Morehouse), SECONDED (Hon. Gil Coerper) and UNANIMOUSLY AGREED to approve the Staff's recommendation to deny the City of Monterey Park's Appeals request. **A ROLL-CALL VOTE WAS TAKEN AND RECORDED AS FOLLOWS:**

**Los Angeles County – Yes
Orange County – Yes
Riverside County – Yes
San Bernardino County – Yes
Ventura County – Yes
Imperial County – Yes**

- 5.2.8 City of Covina
Appeal request to reduce draft RHNA allocation by 70% (925 units).

Jeff Knigel, presented the City of Covina Appeals request:
The City of Covina is appealing on the lack of availability for land for residential use. Covina is a community of seven square miles and consists of approximately 47,000 residents. In 1992 the city completed a land use inventory as part of its general plan.

**REGIONAL HOUSING NEEDS ASSESSMENT APPEALS BOARD
and
SOUTHERN CALIFORNIA ASSOCIATION OF GOVERNMENTS**

**April 27, 2007
Minutes**

Staff Report: The City's appeal requests a 70% reduction from 1,325 units down to 400 units and is based on 2158 factors that Mr. Knigel mentioned. Staff is recommending denial. Our analysis showed that the information submitted may present challenges for them but does not meet the standards set by the statute.

Rebuttal: None

Public Comment in regard to the Appeal for Covina: None

Comments from the Board: Clarifying questions were asked and answered by the applicant and staff.

It was MOVED (Hon. Gil Coerper), SECONDED (Hon. Charles White) and UNANIMOUSLY AGREED to approve the Staff's recommendation to deny the City of Covina's Appeals request. **A ROLL-CALL VOTE WAS TAKEN AND RECORDED AS FOLLOWS:**

**Los Angeles County – Yes
Orange County – Yes
Riverside County – Yes
San Bernardino County – Yes
Ventura County – Yes
Imperial County – Yes**

5.2.9 City of Arcadia

Appeal request to reduce draft RHNA allocation by 69% (1,470 units).

Don Penman and Veronica Tam represented the City of Arcadia

Don Penman: The City of Arcadia wants to clarify the reduction being requested. The City is not requesting 1,470 units; it is requesting a reduction of 1,067. The City asked to cut the replacement factor from 806 to 403 and the new construction factor from 1324 to 660. We also understand the restraints the Board is under. For the record, the City's

**REGIONAL HOUSING NEEDS ASSESSMENT APPEALS BOARD
and
SOUTHERN CALIFORNIA ASSOCIATION OF GOVERNMENTS**

**April 27, 2007
Minutes**

concerns are about the availability of suitable sites, the City is a built out city and, while there are under utilized sites, the City does not think it's realistic to try to facilitate 2130 units when, during the last RHNA allocation process, we had 540. The City thinks that, with the redevelopment area, we can probably see around 600 units. The City is concerned that the land costs are very high, and that it is currently doing six affordable units - moderate income owner occupied units and the subsidy per unit is \$350,000. The City is looking at just infill projects, over the past six years, it has seen an over 200 net increase in units. Many of the community's families have grown, children are out of the house, people are selling their homes, new families are moving in. Arcadia is a very popular city. One strong reason is the school system; it is in high demand, with people moving into existing households.

Veronica Tam: The City would like to focus on the replacement factor. The City would like to bring to the Board's attention that, in doing research for the appeal, we noticed an inconsistency between the RHNA model and AB 2348. When the RHNA model includes a replacement factor we're essentially talking about gross production. Prior to the adoption of AB 2348, jurisdictions were allowed to use a gross capacity in the housing analysis. The City talked to Joe Carreras, SCAG staff, and he recognized that there is an inconsistency. In the City's appeal, it has given an example to demonstrate the inconsistency. That problem impacts heavily the jurisdictions within the San Gabriel valley region and the South Bay Subregions.

Staff Report:

Joe Carreras, SCAG Staff, stated that we have had discussions with the city, more specifically, in terms of the City's particular problem, it was after the draft plan had been posted and the methodology set. Staff recognized the scale of this issue in Arcadia - with much more severe policy implications in other communities. As much as it impacts the City of Arcadia, it impacts other cities even more. Staff has stressed to the state housing department that this is something that needs to be reconciled at the local housing element stage. With policies at cross purposes this is where HCD can play a valuable role in resolving this. There are issues that need to be addressed in the local housing element phase. We encourage the city to move forward in its aggressive pursuit of a much better state policy. We still recommend to deny based on the methodology.

**REGIONAL HOUSING NEEDS ASSESSMENT APPEALS BOARD
and
SOUTHERN CALIFORNIA ASSOCIATION OF GOVERNMENTS**

**April 27, 2007
Minutes**

Rebuttal: None

Any public comment? None

Hon. Jon Edney, Chair: I'd like to bring up a point that Mrs. Tam brought up. It is the process we deal with - when the State passes legislation that says that a City will do this or that, all jurisdictions are all forced to follow that. A legitimate item is raised, and when you contact the State that provided the legislation and statute they say have someone else deal with it. SCAG doesn't choose or decide what they can pick and choose. It is the state statute and it's the methodology that has been approved and gone through the entire public process and adopted. An example we run into, the state creates the problem and sends it back to us to deal with.

I do understand your argument, I will state for the record, unfortunately it is not in the purview of our consideration with regard to how it applies to either the methodology or the 2158 factors. If the city of Arcadia needs assistance in this issue I hope that the SCAG staff would provide assistance.

It was **MOVED** (Hon. Charles White), **SECONDED** (Hon. Paul Nowatka), and **UNANIMOUSLY AGREED** to approve the Staff's recommendation to deny the City of Arcadia's Appeals request. **A ROLL-CALL VOTE WAS TAKEN AND RECORDED AS FOLLOWS:**

**Los Angeles County – Yes
Orange County – Yes
Riverside County – Yes
San Bernardino County – Yes
Ventura County – Yes
Imperial County – Yes**

Applicant: One thing that would help, one suggestion is to separate RHNA into the new construction need, the replacement need and the vacancy correction; so that there are 3 components for jurisdictions.

**REGIONAL HOUSING NEEDS ASSESSMENT APPEALS BOARD
and
SOUTHERN CALIFORNIA ASSOCIATION OF GOVERNMENTS**

**April 27, 2007
Minutes**

Lynn Harris, SCAG Staff, stated that SCAG would be happy to work with the City.

Hon. Jon Edney, Chair: SCAG did work with the Regional Council and all of the member agencies on their concerns with the RHNA process. We made slight inroads with SB12. We are aware that this is a very flawed process. The State provides no assistance in sorting this out other than "we need housing, you go do it". We're concerned with that when we move forward; SB12 has improved the process a little.

6.0 CHAIR'S REPORT

Legal Counsel Jeff Margulies: For the record, after yesterday's hearing regarding Los Angeles County and the annexation issue, I was thinking about the issues the Board raised about the allocation going to everybody and not going to Santa Clarita. There is a way the board can address this issue. The statute, Government Code 65584.05, subsection e talks about the process of the hearings and the decision of the board. It closes with: "the final action on appeal may require the council of governments or delegate subregion, as applicable, to adjust the allocation of a local government that is not in the subject of an appeal."

Hon. Jon Edney, Chair: The point is, the question on the annexed units and where they go. We did approve the appeal of those units. For the record, the Board brought up the fact that those units belonged to the city of Santa Clarita. What Legal Counsel is citing today is that this Board could determine prior to the final adoption that those units in fact will be distributed to Santa Clarita as opposed to the standard reallocation.

Hon. Paul Nowatka: Is that the section we use for the reallocation of all of the approved appeals?

Legal Counsel Margulies: No, it is not. When the Board was having the discussion yesterday, there is a section in SB12 that talks about appeals, not a procedure section, it is the one that split the appeals from revisions and allowed us to move forward. It didn't displace the existing appeal statute, it supplemented it for us. The allocation and reallocation process is in subdivision G. It is identified under a separate section. Subdivision e is: "you may decide in your final decision, which is, after you decide to grant

**REGIONAL HOUSING NEEDS ASSESSMENT APPEALS BOARD
and
SOUTHERN CALIFORNIA ASSOCIATION OF GOVERNMENTS**

**April 27, 2007
Minutes**

the appeal, you may decide to reallocate those appeals to an entity that was not the subject of an appeal.”

Hon Paul Nowatka: You’re trying to give us some good news.

Hon. Jon Edney, Chair: I’m going to make a proposition that we consider this item on Monday April 30, 2007, when we open the public hearing portion. The Board can ask the Staff to put together a small verbal report, outlining what our legal counsel explained and then we can take action on Monday.

Board member: Is there an opportunity for the city of Santa Clarita to file an appeal of our decision?

Legal Counsel Margulies: There doesn’t appear to be an opportunity in the process because the filing period of appeals has closed. The final decision is subject to approval by the appeals board which will be subject to public notice. The final allocation will be as well.

Hon. Paul Nowatka: Are we going to notify Santa Clarita so they can object by Monday?

Legal Counsel Margulies: No, you’re going to make a decision that is going into the final allocation

Hon. Paul Nowatka: The Chair asked for a staff report that we will consider on Monday.

Hon. Jon Edney, Chair: I think what Mr. Margulies is saying is that we are not required in the statute to add appealed units to Santa Clarita. He is identifying an approach for us, if that is the wish of the Board, after we hold the hearing on Monday.

Legal Counsel Margulies: As I recall, the County of LA raised these issues in its comments and appeal which was part of the record so the issue has been noticed.

Hon. Gil Coerper: You said it is appealable for those who have not filed an appeal?

**REGIONAL HOUSING NEEDS ASSESSMENT APPEALS BOARD
and
SOUTHERN CALIFORNIA ASSOCIATION OF GOVERNMENTS**

**April 27, 2007
Minutes**

Legal Counsel Margulies: The statute is saying that your final action can direct SCAG, in its final allocation, to reallocate from one jurisdiction that appealed to some other jurisdiction that didn't appeal.

Hon. Gil Coerper: Then you're putting an awesome burden on the cities that at the last minute may get a significantly higher new number.

Legal Counsel Margulies: We're talking about the way the legislature set the law. Cities may well have an argument about fundamental fairness and the right to object to that.

Hon. Jon Edney, Chair: You can argue fundamental fairness the other way too. This is why I requested a staff report before we vote on this.

Joann Africa, SCAG Legal Staff: When I first read that statute I thought it meant "any final action on the appeal could, in fact, result in an adjustment to all of the cities that didn't appeal." For example, under the reallocation process, all of the cities that didn't appeal here are going to get an adjustment based upon the successful appeal.

Hon. Jon Edney, Chair: It is very broad in its scope. In light of what was brought up yesterday, I just want to verify the information presented by a jurisdiction. Staff somewhat responded to it, but we don't have anything written that we've had a chance to review. I think it would be appropriate before we take final action.

Hon. Charles White: Riverside County would be in favor in such an action.

Hon. Jon Edney, Chair: Is everyone in agreement to have staff bring a report on this on Monday?

All: Yes.

7.0

STAFF REPORT

Staff Report:

Lynn Harris, SCAG Staff, stated she has the General Assembly Agenda for Thursday May 3—at Biltmore Hotel to distribute to the Board

**REGIONAL HOUSING NEEDS ASSESSMENT APPEALS BOARD
and
SOUTHERN CALIFORNIA ASSOCIATION OF GOVERNMENTS**

**April 27, 2007
Minutes**

Any additional comments: NONE

The Chair thanked the Committee and the Board for their patience and hard work

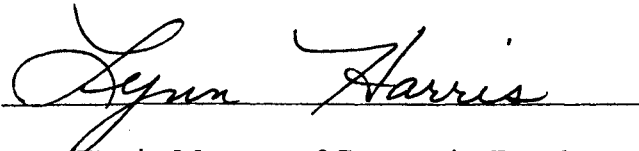
8.0 FUTURE AGENDA ITEMS

Any committee members or staff desiring to place items on a future agenda may make such a request.

9.0 ADJOURNMENT

Hon. Jon Edney adjourned the meeting at 3:00 PM.

Approved by:

A handwritten signature in cursive script, reading "Lynn Harris", is written over a horizontal line.

Lynn Harris, Manager of Community Development
Southern California Association of Governments